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Caring for Your Coast

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**Gary Jones**  
Acting Director

**Kerry Silverstrom**  
Chief Deputy

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Deputy Director

## ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

19 November 12, 2013

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

November 12, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS:  
APPROVAL OF FOURTH EXTENSION OF AND MODIFICATION TO LEASE OPTION  
AGREEMENT TO FACILITATE REDEVELOPMENT –  
PARCELS 52R AND GG (BOAT CENTRAL) – MARINA DEL REY  
(FOURTH DISTRICT)  
(4 VOTES)**

### **SUBJECT**

Request for approval of Fourth Extension of and Modification to Lease Option Agreement for Parcels 52R and GG ("Fourth Extension Agreement"), providing for an extension of up to a maximum of 24 months to allow additional time to procure a Coastal Development Permit from the California Coastal Commission for the proposed boat storage development on the subject parcels and for Boat Central to negotiate a new option agreement and lease agreement with County.

### **IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Acting Director of the Department of Beaches and Harbors to execute the attached Fourth Extension of and Modification to Lease Option Agreement with respect to Parcels 52 and GG, Marina del Rey, granting an extension for up to 24 months to provide additional time to procure a Coastal Development Permit from the California Coastal Commission and for Boat Central to negotiate a new option agreement and lease agreement with County for redevelopment of the parcels as entitled.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On May 22, 2007, your Board granted MDR Boat Central, Ltd. ("Boat Central") an option ("Option") to facilitate redevelopment of Parcels 52R and GG. The proposed project contemplates creation of

additional boat storage spaces in Marina del Rey by utilizing a vertical storage method, allowing a greater number of boats to be stored in a given square footage of land area. The proposed dry-stack boat storage building contains approximately 47,084 square feet of space, is 75 feet high, is partially cantilevered over the water (97 feet on the west side and 45 feet on the east side), and will accommodate between 345 boats and 28 boat trailers. The proposal is to provide additional outside storage space for 30 mast-up sailboats and no less than 131 parking spaces. The proposed project would not only accommodate the number and types of boats previously dry-stored in the Parcel 77 surface storage lot, which will be displaced when Parcel 77 is redeveloped, but would also provide significant additional capacity for boats currently in wet slips or kept outside of the Marina. In addition, the project as proposed would include a 3,070 square foot office/lobby area, a 1,600 square foot maintenance facility, a 3,265 square foot Sheriff boatwright facility with a 2,200 square foot yard area, and three dedicated public wash down spaces. All new docks would be constructed, except for the existing Sheriff/County maintenance docks, which would be required to be replaced no later than ten years from the start of the lease. A proposed lease would be for a term of 60 years for Parcels 52R and GG; require payment of a non-refundable \$100,000 option fee; and establish a sinking fund, namely a Capital Improvement Fund. Total development costs would be required to be not less than \$7.5 million (in 2005 dollars).

Although Boat Central diligently pursued the entitlements for the proposed project under the Option, it was unable to acquire such entitlements prior to the expiration of the Option. The County has not granted a new option to Lessee for the lease and development of Parcel 52R and GG subsequent to the expiration of the Option, but your Board previously has agreed to continue negotiations with Lessee on an exclusive basis for the grant of a new option. The time period for those negotiations previously has been extended to provide additional time for CEQA compliance, completion by Boat Central of the entitlement process for its project, including a change in land use designation, and the negotiation of a new option agreement and lease agreement with County.

The change in land use designation was approved by your Board as part of the Local Coastal Program (LCP) Amendment on November 29, 2011. The California Coastal Commission certified the LCP Amendment on February 8, 2012.

The Regional Planning Commission certified the Environmental Impact Report (EIR) for the Boat Central Project on April 24, 2013. Boat Central is therefore requesting an additional extension to: i) procure a Coastal Development Permit (CDP) from the California Coastal Commission, and ii) negotiate the terms of a new option agreement and lease agreement.

In consideration for the proposed additional extension, not to exceed 24 months, Boat Central has agreed to pay County a total amount not to exceed \$36,000, payable as follows: (1) \$9,000 upon signing of the Fourth Extension Agreement in consideration of a six-month extension to May 18, 2014; and (2) \$1,500 for each month of any additional extension period (up to an additional 18 months after the initial 6-month extension) that Acting Director determines to grant. The grant of any extensions beyond the first six-month period is in Acting Director's sole and absolute discretion. In no event shall the total extension period extend beyond November 18, 2015. The County's economic consultant has confirmed that the payment schedule set forth above is reasonable. In consideration for Boat Central's continued efforts on the proposed project and payment of the foregoing extension fees, County will agree during the term of the Fourth Extension Agreement not to enter into negotiations with respect to the premises or the project with any other non-governmental party.

### **Implementation of Strategic Plan Goals**

The recommended action will allow Boat Central to continue to seek entitlements and to negotiate with County for the proactive redevelopment of the premises, which will result in fulfillment of approved Strategic Plan Goals No. 1, "Operational Effectiveness," Strategy No. 1, "Fiscal Sustainability", and Goal No. 3, "Community and Municipal Services," Strategy No. 1, "Cultural and Recreational Enrichment", respectively.

### **FISCAL IMPACT/FINANCING**

#### **Operating Budget Impact**

Upon your Board's approval of the proposed extension agreement, the Department's Marina operating budget will receive a one-time \$9,000 payment as stated above. The payment was not included in the Department's 2013-14 budget; therefore, it will be accounted for as over-realized revenue.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The expired Option for Parcels 52R and GG commenced on May 22, 2007 and after two 6-month extensions terminated on November 22, 2009. The Extension of and Modification to Lease Option Agreement dated November 10, 2009 granted Boat Central the right until November 22, 2012 to continue to obtain its entitlements and to negotiate a new option agreement and lease agreement with County. The Second Extension to and Modification of Lease Option Agreement dated November 20, 2012 extended the outside date to complete the EIR certification and negotiate a new option and lease agreement to no later than May 20, 2013. The Third Extension to and Modification of Lease Option Agreement dated May 14, 2013 further extended the outside date to November 18, 2013.

### **ENVIRONMENTAL DOCUMENTATION**

On April 24, 2013, the Regional Planning Commission considered and certified the environmental impact report (EIR) for Parcels 52 and GG and adopted the Findings of Fact and a Statement of Overriding Considerations regarding the FEIR for the proposed redevelopment project. The proposed Fourth Extension Agreement does not raise any new or different environmental impacts.

Moreover, the proposed County approval is not a project pursuant to the California Environmental Quality Act (CEQA) because the approval is an activity that is excluded from the definition of a project by Section 15378(b)(5) of the State CEQA Guidelines. The proposed approval is an administrative activity of government which will not result in direct or indirect physical changes to the environment.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

### **CONCLUSION**

Please return to the Department of Beaches and Harbors three adopted copies of the board letter. Should you have any questions or comments, please contact Don Geisinger at (310) 305-9506 or

The Honorable Board of Supervisors

11/12/2013

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dgeisinger@bh.lacounty.gov.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Jones', with a stylized, looping initial 'G'.

GARY JONES

Acting Director

GJ:dlg

Enclosures

c: Chief Executive Officer  
County Counsel  
Executive Officer, Board of Supervisors

**FOURTH EXTENSION OF AND MODIFICATION TO**  
**LEASE OPTION AGREEMENT**  
**(Parcels 52R and GG)**

THIS FOURTH EXTENSION OF AND MODIFICATION TO LEASE OPTION AGREEMENT (“**Fourth Extension Agreement**”) is dated as of November \_\_\_\_, 2013 between COUNTY OF LOS ANGELES (“**County**”), and MDR BOAT CENTRAL, L.P., a California limited partnership (“**Lessee**”).

RECITALS

A. County and Lessee entered into that certain Lease Option Agreement dated as of May 22, 2007 (the “**Original Agreement**”), pursuant to which County granted to Lessee an option to lease (the “**Option**”) certain real property in Marina del Rey commonly known as Parcels 52R and GG and more particularly described on Exhibit A attached to the Agreement (the “**Premises**”).

B. The Outside Date for the exercise of the Option under the Original Agreement expired on November 22, 2009.

C. County and Lessee entered into that certain Extension of and Modification to Lease Option Agreement dated as of November 10, 2009 (the “**First Extension Agreement**”) that extended the term of the Original Agreement to not later than November 22, 2012 and modified the provisions of the Original Agreement to allow Lessee additional time to obtain its entitlements and to negotiate a new option agreement with County to be entered into only after compliance with the California Environmental Quality Act (California Resources Code Sections 21000 *et seq.*) (“**CEQA**”).

D. County and Lessee entered into that certain Second Extension of and Modification to Lease Option Agreement dated as of November 10, 2012 (the “**Second Extension Agreement**”) that extended the term of the Original Agreement to not later than May 20, 2013.

E. County and Lessee entered into that certain Third Extension of and Modification to Lease Option Agreement dated as of May 14, 2013 (the “**Third Extension Agreement**”) that extended the term of the Original Agreement (including the additional extension rights set forth in the Third Extension Agreement) to not later than November 18, 2013. The Original Agreement, as modified by the First Extension Agreement, the Second Extension Agreement and the Third Extension Agreement, is hereafter referred to as the “**Existing Agreement**.”

F. County and Lessee desire to enter into this Fourth Extension Agreement to further extend the term of the Existing Agreement for the purpose of providing additional time for the negotiation by County and Lessee of a New Option.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and County hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms used in this Fourth Extension Agreement and not otherwise defined herein shall have the meanings given to such terms in the Existing Agreement.

2. **Further Extension.** Section 2 of the Existing Agreement is hereby amended and restated in its entirety to read as follows:

“2. **Agreement Term.** This Agreement shall continue in effect for a term (the “**Agreement Term**”) that expires on May 18, 2014 (the “**Expiration Date**”). In consideration of the extension of the Agreement Term to the Expiration Date set forth above, concurrent with the execution of this Agreement Lessee has paid to County an Extension Fee of Nine Thousand Dollars (\$9,000.00).

If as of the then-current Expiration Date, Lessee continues to diligently pursue its Coastal Development Permit from the California Coastal Commission, and/or Lessee and County have not reached agreement on a New Option, then the Director of the County’s Department of Beaches and Harbors (the “**Director**”), in his sole discretion, shall have the right to extend the Expiration Date for up to a total of eighteen (18) additional months in increments ranging from one-month to six-month periods at the discretion of Director (each, an “**Extension**”). Each such Extension shall be conditioned upon delivery by Lessee to County not later than ten (10) days prior to the then-effective Expiration Date of a payment of \$1,500 per month for the length of the Extension which Director has notified Lessee that it is willing to grant. County (through Director) has no obligation to extend the Expiration Date beyond May 18, 2014.

The Extension Fees shall be non-refundable, and are in addition to the Option Fee previously paid by Lessee pursuant to Section 4 of the Original Agreement and the Extension Fees previously paid by Lessee pursuant to Section 5 of the First Extension Agreement, the Extension Fees previously paid by Lessee pursuant to Section 2 of the Second Extension Agreement and the Extension Fees previously paid by Lessee pursuant to Section 2 of the Third Extension Agreement.

Notwithstanding any contrary provision hereof, there shall be no extension of the Expiration Date at any time during which there is an uncured default by Lessee under this Agreement. In addition, there shall be no extension of the Expiration Date following any affirmative disapproval of the Project by County (or any department, commission, board or other agency thereof) or the California Coastal Commission, except for a disapproval that instructs or requests Lessee to modify the Project for reconsideration of such disapproval. Time is of the essence

with respect to the exercise by Lessee of any right to extend the Expiration Date pursuant to this Section 2.”

3. **County Costs.** Lessee shall promptly following written demand from County reimburse County for the Actual Costs (as defined in the Lease) incurred by County in the review, negotiation, preparation and documentation of the matters that are the subject of this Fourth Extension Agreement.

4. **Exclusivity; No Commitment.** County agrees that during the Agreement Term it shall not enter into negotiations with respect to the Premises, the Project or any other development of the Premises with any other person or entity that is not an agency or department of County or another governmental entity, other than Lessee, without the prior written consent of the Lessee. Notwithstanding any contrary term or provision of this Agreement, Lessee acknowledges and agrees that (a) nothing in the Existing Agreement or this Fourth Extension Agreement shall be construed or interpreted as a commitment by, or an obligation of, County to grant Lessee an option to lease or develop the Premises; (b) neither County, the Department, the Director or any agency, department, commission, committee, official, representative, agent or employee of County has made, and Lessee has not relied upon and is not relying upon, any representations, affirmations, commitments or agreements to grant Lessee an option to lease or develop the Premises; (c) except for the future approval and execution by County of a definitive option agreement, no negotiations or communications between County, the Department, the Director or any agency, department, commission, committee, official, representative, agent or employee of County shall constitute and Lessee shall not rely upon, any representation, affirmation, commitment or agreement to grant Lessee an option to lease or develop the Premises; (d) County has made no determination or commitment to lease or develop the Premises, and County has the right in its sole and absolute discretion to determine at any time not to proceed with the lease or development of the Premises to or by Lessee, and to discontinue negotiations with Lessee for an option to lease or develop the Premises at any time; and (e) subject to County’s obligation set forth in the first sentence of this Section 4, County shall be free to lease the Premises to any person or entity, or develop or use the Premises for any purpose.

5. **Entire Agreement.** This Fourth Extension Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

6. **Attorneys’ Fees.** In the event of any action, proceeding or arbitration arising out of or in connection with this Fourth Extension Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys’ fees, including without limitation, attorneys’ fees for County Counsel’s services to the extent that County is represented by the County Counsel and is the prevailing party.

7. **No Other Modifications.** All other terms and conditions of the Existing Agreement continue in full force and effect.

8. **Counterparts.** This Fourth Extension Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE



IN WITNESS WHEREOF, the undersigned have executed this Fourth Extension Agreement as of the date first written above.

LESSEE:

MDR BOAT CENTRAL L.P., a California limited partnership

By: MDR Boat Central, LLC, a California limited liability company

By: Pacific Marina Developments, Inc., a California corporation, Its Manager

By:   
Thomas J. Hogan, President

COUNTY:

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Acting Director, Department of Beaches and Harbors

ATTEST:

SACHI A. HAMAI, Executive  
Officer of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

JOHN F. KRATTLI  
County Counsel

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_

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